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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1999

RYAN JEFFREY ADAMS,
Petitioner

vs

STATE OF NORTH CAROLINA,
Respondent

PETITION FOR WRIT OF *CERTIORARI*
FROM THE SUPREME COURT OF NORTH CAROLINA

PETITION FOR WRIT OF *CERTIORARI*

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24pp

QUESTION PRESENTED FOR REVIEW

Whether the prosecution of a defendant for trafficking in controlled substances constitutes double jeopardy under the 5th and 14th Amendments to the United States Constitution when the defendant has previously had a judgment imposed upon him under the North Carolina Drug Tax, where the operation of said drug tax law has been determined to be a criminal penalty by the Fourth Circuit Court of Appeals in the case of *Lynn v. West*, 134 F.3d 582 (4th Cir. 1998).

PARTIES

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ORDER OF THE NORTH CAROLINA SUPREME COURT AND OPINION OF THE NORTH CAROLINA COURT OF APPEALS

The order of the North Carolina Supreme Court denying Discretionary Review which gives rise to this petition is attached as Appendix A and is designated as *State v. Adams*, ___ N.C. ___, ___ S.E.2d ___(No. 210P99)

The opinion of the North Carolina Court of Appeals for which Discretionary Review was sought that gives rise to this petition is attached as Exhibit "B" and is designated as *State v. Ryan Jeffrey Adams*, ___ N.C. App.___, 513 S.E.2d 588 (1999)

JURISDICTION

1. The decision sought to be reviewed was decided 22 July 1999.

2. There are no cross petitions.

3. The statutory provision believed to confer jurisdiction on this Court to review the Judgment is as follows:

> That the decision of the North Carolina Supreme Court denying review of the North Carolina Court of Appeals decision that a defendant may be criminally prosecuted for drug violations after having already been subjected to the criminal penalty of the North Carolina Drug Tax is repugnant to the 5th and 14th Amendments of the United States Constitution as set forth in 28 U.S.C. 1257; further, that the North Carolina State Court's decision in this matter defied an important question of federal law that has been decided in a contrary manner by the United States Fourth Circuit Court of Appeals, but which has not been decided by this Court, pursuant to Rule 10 (1)(c) of the Supreme Court Rules.

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment V

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; not shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in a criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use without just compensation.

United States Constitution, Amendment XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within the jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The defendant was indicted by the Grand Jury in Randolph County on 25 August 1997 for three violations of the North Carolina Controlled Substances Act: felonious trafficking of cocaine by possession, felonious possession of more than one-half ounces of marijuana, and possession with intent to manufacture, sell and deliver marijuana. The defendant filed a pre-trial motion to dismiss the indictments on grounds that prosecution of these charges would violate his rights against double jeopardy under the 5th and 14th Amendments of the United States Constitution. At a pre-trial hearing in Superior Court of Randolph County, North Carolina on 17 February 1998, the trial judge granted the defendant's motion and barred the state from prosecuting the defendant on the charges. The State of North Carolina appealed the trial court's decision to the North Carolina Court of Appeals, which reversed the trial court's decision and reinstated the prosecution. *State v. Ryan Jeffrey Adams*, ___ N.C. App.___, 513 S.E.2d 588, disc. review denied, ___ N.C. _____, ___ S.E. 2d. ___ (No. 210P99) (1999).

Defendant sought Discretionary Review by the North Carolina Supreme Court, which denied the defendant's petition on 22 July 1999.

STATEMENT OF FACTS

On the same date that defendant was arrested, 8 August 1997, the arresting officer, Scott Stockner of the Randolph County Sheriff's Department, made a written report of that arrest on a form provided by the SBI intended for use with unstamped, nontaxpaid controlled substance seizures. This officer's report was sent to the North Carolina Department of Revenue, which, pursuant to N.C. Gen. Stat.§105-241.1, prepared a controlled substance tax assessment as being issued including the following notice, "Concurrent with this action, we are docketing with the Clerk of Court of the appropriate county a Certificate of Tax Liability which places a lien on all of your real property and subjects your personal property to levy." On 3 September 1997 that Certificate of Tax Liability was in fact docketed as a judgment with the Clerk of Superior Court of Randolph County. The total amount of the judgment docketed against the defendant was $456,574.26 together with interest running at the legal rate from that date. The defendant was subject to levy from that date forward by the sheriff pursuant to N.C. Gen.Stat.§105-242(c), Defendant in fact made a partial payment to the Clerk's office against the said judgment.

Defendant submitted a written memorandum of law citing *Lynn v West*, 134 F.3d 582, (1998), *State v. Ballenger* 123 N.C. App. 179, 472

S.E. 2d 572 (1996) and *Montana Department of Revenue vs. Kurth Ranch*, 511 U.S. 767, 114 S. Ct. 1937, 128 L. Ed. 2d 767 (1994). After hearing oral argument from the state and the defendant, considering various documentary exhibits, and after a careful reading of the cases submitted with particular attention to the available printed edition of *Lynn v. West*, the presiding judge, following the Fourth Circuit, ruled that "The North Carolina drug tax on illegal drugs is in reality a criminal penalty", and that further prosecution after the assessment and docketing of the drug tax penalty " is barred by the Double Jeopardy provisions of the Fifth Amendment to the United States Constitution, and the state cannot prosecute this defendant further on incident offenses." Based on that holding the trial judge dismissed prosecution of this case.

After hearing all arguments from both sides, the Court of Appeals entered a decision reversing the Superior Court and reinstating the prosecution. In its decision, the Court of Appeals noted that "While the Supreme Court may wish to reexamine the holding of *Ballenger* and *Creason* in light of the Fourth Circuit's decision in *Lynn v. West*...[that] action is not within the province of this Court." The North Carolina Supreme Court has refused to take this case.

REASONS WHY *CERTIORARI* SHOULD ISSUE

The Fourth Circuit Court of Appeals has held that the identical North Carolina Drug Tax enforced and imposed in this case is in fact a criminal penalty and not merely a civil matter. The courts of North Carolina had repeatedly held otherwise by decisions of the North Carolina Court of Appeals, although the matter has never been directly addressed by the North Carolina Supreme Court. When the trial judge in North Carolina dismissed the prosecution of this case on grounds that prosecution was barred by the prohibition against double jeopardy, he was following federal law directly on point from the Circuit Court of Appeals which includes North Carolina within its jurisdiction. *Lynn v. West*, 134 F.3d 582 (4th Cir. 1998). The North Carolina Court of Appeals, in reversing the Trial Court, described itself as powerless to reverse its earlier decision, rendered before *Lynn v. West*, despite the fact that those decisions were now in obvious conflict with constitutional law as decided by the Fourth Circuit Court of Appeals. The North Carolina Court of Appeals appeared to hope that the North Carolina Supreme Court would "re-examine the holding[s]" of prior North Carolina cases "in light of the Fourth Circuit's decision in *Lynn v. West*", but noted that "Federal appellate decisions are not binding upon either the appellate or trial courts

of this state."

The result is that this defendant will now be placed for the second time in jeopardy for the same offense in contravention of the 5th and 14th Amendments of the United States Constitution and in contravention to the clear ruling of the Fourth Circuit Court of Appeals, because the North Carolina Supreme Court and Court of Appeals will not accept federal law as binding upon North Carolina.

CONCLUSION

For the reasons set forth herein petitioner respectfully petitions the Court to grant this petition for Writ of *Certiorari*.

This the 19th day of October, 1999.

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APPENDIX TO PETITION FOR WRIT OF *CERTIORARI*

APPENDIX

A. The decision of the North Carolina Court of Appeals reversing the trial court's dismissal of the charges against Petitioner is reprinted in its entirety.

B. The order of the North Carolina Supreme Court denying discretionary review of the decision by the North Carolina Court of Appeals is reprinted in its entirety.

EXHIBIT "A"

No: COA98-373 NINETEEN-B DISTRICT

North Carolina Court of Appeals

STATE OF NORTH CAROLINA

v

RYAN JEFFERY ADAMS,
Defendant

From Randolph
(97 CRS-10819-21)

ORDER

Petition for Discretionary Review to review the decision of the North Carolina Court of Appeals filed on the 6th day of April 1999 was denied by order of the North Carolina Supreme Court on the 22nd day of July 1999, and same has been certified to the North Carolina Court of Appeals;

IT IS THEREFORE CERTIFIED to the Clerk of Superior Court Randolph County North Carolina that the North Carolina Supreme Court has denied the Petition for Discretionary Review filed by the Defendant in this cause.

WITNESS my hand and official seal this the 16th day of August 1999.

S/John H. Connell
John H. Connell
Clerk, North Carolina Court of Appeals

S/Kathy Taylor
Deputy Clerk,
North Carolina Court of Appeals

Orig. to CSC
Copy to:
Mr. William B. Crumpler, Assistant Attorney General, For State

Mr. Hampton Y. Dellinger
Special Counsel
Mr. Jonathan L. Megerian, Attorney at Law, For Ryan J.Adams

EXHIBIT "B"

NO. COA98 –373

NORTH CAROLINA COURT OF APPEALS

Filed: 6 April 1999

STATE OF NORTH CAROLINA

v. Randolph County
No. 97 CRS 10819-21

RYAN JEFFREY ADAMS,
Defendant.

Appeal by the State from judgment filed 24 February 1998 by Judge W. Douglas Albright in Randolph County Superior Court. Heard in the Court of Appeals 18 February 1999.

Attorney General Michael F. Easley, by Special Counsel Hampton Y. Dellinger and Assistant Attorney General William B. Crumpler, for the State.

Jonathan L. Megerian for defendant-appellee.

JOHN, Judge.

The State appeals the trial court's grant of defendant's motion to dismiss. We reverse the trial court.

Pertinent facts and procedural history include the following: In the course of defendant's 8 August 1997 arrest on charges of violations of the North Carolina Controlled Substances Act, N.C.G.S. §§ 90-86 through 90-113.8 (Supp. 1995), approximately 1,300 grams of cocaine and 9,000 grams of marijuana were seized. Subsequently, the North Carolina Department of Revenue sought to collect unpaid taxes on the seized drugs pursuant to the North Carolina Controlled Substance Tax Act, N.C.G.S. §§

105-113.105 through 105-113.113 (1995) (the Drug Tax). On 3 September 1997, a Certificate of Tax Liability in the amount of $456,574.26 was docketed as a judgment against defendant in the Office of the Randolph County Clerk of Superior Court. Defendant paid a portion of that amount prior to the scheduled trial date of 17 February 1998.

Defendant subsequently moved to dismiss the charges against him, alleging prosecution thereon was barred under the principle of double jeopardy. Defendant's motion was allowed 17 February 1998 and the State thereafter filed timely notice of appeal.

In the main, the State submits the trial court's ruling must be reversed because it conflicts with the decisions of our appellate courts in *State v. Ballenger,* 123 N.C. App. 179, 472 S.E.2d 572 (1966), *aff'd per curiam*, 345 N.C. 626. 481 S.E.2d 84, *cert. denied,* _____ U.S. ____, 139 L. Ed. 2d 29 (1997), and *State v. Creason,* 123 N.C. App. 495, 473 S.E. 2d 771 (1996), *aff'd per curiam,* 346 N.C. 165, 484 S.E.2d 525 (1997). We agree.

Defendant does not dispute that *Ballenger* and *Creason* upheld assessment and collection of the Drug Tax pursuant to G.S. § 105-113.105 through 105-113.113 against a constitutional challenge indistinguishable from that mounted by defendant herein. *See Ballenger,* 123 N.C. App. at 498-99, 473 S.E.2d at 772. Notwithstanding, in his appellate brief and at oral argument, defendant proffered the decision of the United States Court

of Appeals for the Fourth Circuit in *Lynn v. West,* 134 F. 3d 582 (4th Cir. 1998), *cert. denied,* _____U.S._____, 142 L. Ed. 2d 36 (1998), as sustaining the trial court's action.

However, with the exception of decisions of the United States Supreme Court, federal appellate decisions are not binding upon either the appellate or trial courts of this State. *See State v. McDowell*, 310 N.C. 61, 74, 310 S.E.2d 301, 310 (1984) (state courts should treat "decisions of the United States Supreme Court as binding and accord[] to decisions of lower federal courts such persuasiveness as these decisions might reasonably command"). It is axiomatic, moreover, that one panel of this Court is bound by the prior decision of another panel addressing the same issue, although in a different case, absent modification by our Supreme Court, *In the Matter of Appeal from Civil Penalty,* 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989), and that this Court is "responsib[le] to follow" decisions of the North Carolina Supreme Court. *Dunn v. Pate,* 334 N.C. 115, 118, 431 S.E.2d 178, 180 (1993).

Accordingly, while our Supreme Court may wish to reexamine the holding of *BallengerI* and *Creason* in light of the Fourth Circuit's decision in *Lynn v. West* or ;the General Assembly may seek to modify F.S. §§105-113.105 through 105-113.113, neither action is within the province of ;this Court. *See Civil Penalty,* 324 N.C. at 384, 379 S.E.2d at 37; *Pate,* 334 N.C. at 118, 431 S.E.2d at 180; and *McDowell,* 310 N.C. at 74, 310 S.E.

2d at 310. The trial court's dismissal of ;the charges against defendant is reversed.

Reversed.

Judges WALKER and McGEE concur.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1995

RYAN JEFFREY ADAMS,
Petitioner

vs.

STATE OF NORTH CAROLINA,
Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an attorney at law licensed to practice in the State of North Carolina, is a member of the Bar of this Court, is attorney for the Petitioner, and is a person of such age and discretion as to be competent to serve process.

That on the 19th day of October, 1999, he served a copy of the attached Petition for Writ of *Certiorari* by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and their contents in the United States Mail at Asheboro, North Carolina.

Address:

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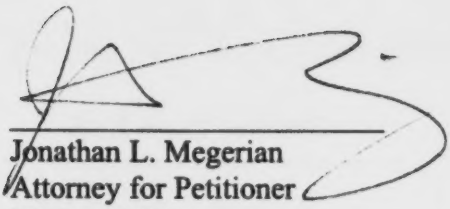
c/o William B. Crumpler
Assistant Attorney General
N.C. Department of Justice
PO Box 629
Raleigh, NC 27602
Telephone: (919) 716-6500



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